

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**MARTA ROMERO, FABIANA SANTOS,
GLADYS FUENTES, SANTIAGO CRUZ,
and MILAGRO ALVAREZ,**

Plaintiffs,

v.

**McCORMICK & SCHMICK
RESTAURANT CORP. d/b/a McCORMICK
& SCHMICK'S SEAFOOD RESTAURANT,**

Defendant.

C.A. No. 18-10324-IT

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO SO MUCH OF
COUNT I OF THE COMPLAINT THAT ALLEGES A CLAIM BY PLAINTIFF
MILAGRO ALVAREZ**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, McCormick & Schmick Restaurant Corp. ("Defendant", the "Company" or "M&S")¹, moves for summary judgment as to so much of Count I of the Complaint² that alleges that Plaintiff Milagro Alvarez ("Plaintiff" or "Alvarez") was subject to discrimination pursuant to M.G.L. c. 151B, § 4. Alvarez, who was formerly employed by Defendant as a dishwasher, contends that she was subject to sexual harassment in violation of Mass. Gen. Laws ch. 151B, § 4 ("Chapter 151B") based on her observations of one single comment and sporadic incidents of alleged physical contact between other employees. The uncontested evidence demonstrates that Alvarez cannot prevail on her claim as a matter of law. The record establishes that Defendant is entitled to summary judgment

¹ Defendant notes that it does not operate under a formally registered d/b/a.

² The Complaint contains a single count (Count I), and the Plaintiffs chose to allege that all five suffered an identical statutory violation and are entitled to the same relief.

on Plaintiff's claim because she cannot show that the incidents she alleges to have witnessed were sufficiently "severe and pervasive" to create a "hostile work environment."

The grounds for this Motion are set forth more fully in the supporting Memorandum of Law filed herewith.

Defendant requests a hearing on this Motion.

WHEREFORE, Defendant respectfully requests that its Motion for Summary Judgment as to so much of Count I of the Complaint that Alleges a Claim by Plaintiff Milagro Alvarez be granted, that the Court dismiss Alvarez's claim in its entirety with prejudice, and for other such relief as this Court deems appropriate.

Respectfully submitted,

**MCCORMICK & SCHMICK
RESTAURANT CORP. D/B/A
MCCORMICK & SCHMICK'S
SEAFOOD RESTAURANT**

By its attorneys,

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Dated: May 28, 2019

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(A)(2)

Pursuant to Local Rule 7.1(a)(2), the undersigned hereby certifies that she and her co-counsel conferred with Plaintiff's counsel, Rachel Smit, Esq., and Sophia Hall, Esq. on May 1, 2019 by telephone conference in a good faith attempt to resolve or narrow the issues presented in this Motion and opposing counsel declined to assent to this motion.

Dated: May 28, 2019

/s/ Allison B. Cherundolo

Allison B. Cherundolo

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed through the ECF system on this date, and that a true paper copy of this document will be sent to those indicated as non-registered participants on the Notice of Electronic Filing by first class mail on the same date.

Dated: May 28, 2019

/s/ Allison B. Cherundolo

Allison B. Cherundolo